

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 6/24/09 have been fully considered but they are not persuasive. Applicant argues that Baker does not disclose covering the case with an air permeable material. Examiner disagrees. Baker discloses utilizing vents, thus creating an air permeable material, to cover portions of the case in order to facilitate drying. Any portion that is covered can be considered "an opening". Thus, Baker is still found to read on the claimed subject matter.
2. In order to hasten prosecution, applicant is invited to contact the examiner for an interview regarding the subject matter of the instant application.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bristor (US Patent 6,880,191) in view of Baker (US Patent 5,797,489). Bristor discloses a caddy, equivalent to a kit, comprising a durable container 11 made of plastic (col. 16 lines 35-37) that has an open top for ventilation (figure 4), a sprayer 100, cleaning compositions (col. 17 lines 25-27), and a variety of adaptors that provide quick-disconnect capabilities that could be used with a garden hose (col. 9 lines 10 – 17). Bristor further discloses a purifying device 44 that includes a particulate filter (col. 9

lines 29-30). Bristor also discloses that the caddy can contain brushes (col. 11 lines 50 – 53). The kit also comprises a first opening, in the form of hollow handle assembly 12, for receiving the spraying device, a composition, and adaptor. The assembly connects to the spraying device, delivers composition in the form of water and a dilute chemical injected through venturi injector 58, and has an adaptor for a hose 15. The open top of the container can be used for ventilation and draining. Bristor already discloses a filter 44, or purifier, comprising adaptor 46, screen 48, and body 50 in fluid line with the sprayer. The spray gun in combination with the fluid inlet, venturi injector 58, filter, and associated conduits constitute a spraying device. Chemical is drawn from a container 126. This structurally reads on the apparatus. This caddy is capable of treating the surface of a vehicle. This is regarded as the intended use of the apparatus. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988).

5. While Bristor obviates an open top for ventilation, Bristor does not disclose an opening in the front side that allows for air to ventilate the container. Containers for carrying wet devices are well known in the art to contain vents. Baker shows a device for carrying wet paintbrushes that include air vents 23 in order to aid drying of the

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contents within. Additionally, it is well known in the art that enclosed moisture can create microbial growth and foul odors. Thus, it would have been obvious at the time of the invention to modify Bristor and include an opening in the container for ventilating the container. Vents are conventionally covered with mesh or grating, and the inclusion of such a feature is not considered to be patentable.

6. In regards to claim 6, the apparatus of Bristor is a modified bucket-like device. A variety of buckets are known in the art that have the capacity to drain fluid, including wash buckets with drains, slotted bottoms, or mesh bottoms. One of ordinary skill in the art would find it obvious to modify buckets with vented bottoms, in the same fashion that Bristor modifies a presumably closed bottom bucket (Bristor is silent to the construction of the bottom) to allow the effluent of fluid and prevent accumulation which could alter operation of the device. Furthermore, the function of Bristor's bucket is not to retain fluid, but to hold a variety of devices that come into contact with fluid. One skilled in the art would find it obvious that draining such devices would be desirable. This is not considered to be a patentably distinct feature over the prior art.

7. In regards to the shape of the container, changes in shape or form have been held to be obvious. *In re Dailey* 149 USPQ 47, 50 (CCPA 1966). Carrying cases for wet devices are well known to be bucket-like (Bristor) or suitcase like (Baker). Additionally, the location of the vent is not given patentable weight, absent a showing of unexpected results. Rearrangement of parts was held to have been obvious. *In re Japikse* 86 USPQ 70 (CCPA 1955).

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8. Claim 1 rejected under 35 U.S.C. 103(a) as obvious over Barger et al. (US Patent 6,562,142) in view of Baker. Barger discloses a kit for cleaning vehicles comprising a spray device 20 and a brush-like applicator 16, wherein the spray device includes a barrel portion 46 for receiving a cleaning composition 12, a compartment 48 for a filter 50, and a connection 32 to a hose 24 (col. 3 lines 33-46). Barger discloses that the kit can include additional components; however he does not disclose a plastic carrying case. The inclusion of such a case is considered to be an obvious modification, if not inherent, to one of ordinary skill in the art. Items in a kit are generally packaged together in some sort of case thus constituting the “kit”. Containers for carrying wet devices are well known in the art to contain vents. Baker shows a device for carrying wet paintbrushes that include air vents 23 in order to aid drying of the contents within. Additionally, it is well known in the art that enclosed moisture can create microbial growth and foul odors. Thus, it would have been obvious at the time of the invention to modify Barger and include an opening in the container for ventilating the container. Vents are conventionally covered with mesh or grating, and the inclusion of such a feature is not considered to be patentable.

Claim 3 rejected under 35 U.S.C. 103(a) as obvious over Bristor in view of Baker in further view of Lee. Bristor does not disclose the inclusion of a wash mitt, yet does disclose that the caddy can include commonly used washing devices for specific cleaning operations including brushes (col. 11 lines 50 – 53). Brushes are very similar in function to a wash mitt in that they provide an abrasive cleaning surface. A variety of wash mitts are notoriously well known in the art and are considered to be commonly

used washing devices. Lee discloses one type of mitt that is particularly well suited for cleaning automobiles due to its two surfaces of varying abrasiveness. It would have been obvious at the time of the invention, to modify Bristor and include a wash mitt, like that of Lee, in the caddy as it is a commonly used washing device for removing dirt from surfaces.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HECKERT whose telephone number is (571)272-2702. The examiner can normally be reached on Mon. to Friday, 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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